IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2200 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANSING DEVISING RAJPUT (RATHOD)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Gordhansing Devising Rajput (Rathod), has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Banaskantha at Palanpur, in exercise

of powers under Section 3(1) of the PASA Act, dated January 19, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act. The detaining authority came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the detenue was on police remand when the order of detention was passed and as such the urgency shown by the detaining authority for passing the order is not genuine as the authority has not even considered the aspect of possibility of detenue getting released on bail.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to rival side contentions, it may be noted that the detention is based on one prohibition case registered against the detenue. In respect of that case, the detenue was on police remand when the order was passed. The detaining authority was conscious about this. The detaining authority has not assigned reasons for detaining the petitioner while he was on police remand. The subjective satisfaction recorded by the authority for need for detaining the petitioner is not based on any material to indicate the urgency to meet the need for detaining the petitioner which is not even recorded in the grounds of detention. The passing of order, therefore, while detenue was on police remand would render the order bad in law.

#. The detaining authority was aware about the aspect that the petitioner was on police remand while he was detained. However, the detaining authority has not recorded justification for such detention on account of any compelling reasons as stated by the Apex Court in the case of Rameshwar Show, AIR 1964 SC 334, as reiterated in the case of Dharmendra Sugarchand Chelawat vs. Union of India & ors., AIR 1990 SC 1196 and again in the case of Sanjeev Kumar Aggarwal v. Union of India & ors., AIR 1990 SC 1202 and latest in the case of Ahmed Nisar v. State of Tamil Nadu, 1999 SCC (Cri) 1469, Para 46 and therefore, the order of detention cannot be supported as it does not indicate any genuine reason for passing the detention order (for "immediately preventing the

petitioner from pursuing his activities").

#. Barring one prohibition case, there does not appear to be any other antecedents in the form of a registered offence. The statements of anonymous witnesses, for the above reasons, cannot be considered. Keeping all these aspects of this particular case in mind, this Court is of the view that the impugned order cannot be sustained and the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated January 19, 2000 is hereby quashed and set aside. The detenue - Gordhansing Devising Rajput (Rathod) is ordered to be set at liberty forthwith if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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